



0000172139

EXCEPTION

ORIGINAL

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Timothy M. Hogan (004567)
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
514 W. Roosevelt Street
Phoenix, Arizona 85003
(602) 258-8850

Michael A. Hiatt
EARTHJUSTICE
633 17th Street, Suite 1600
Denver, Colorado 80202
(303) 623-9466

Attorneys for Vote Solar

Arizona Corporation Commission

DOCKETED

JUL 29 2016

DOCKETED BY *[Signature]*

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2016 JUL 29 P 3:01

BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION
OF UNS ELECTRIC, INC. FOR THE
ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE
OF THE PROPERTIES OF UNS ELECTRIC,
INC. DEVOTED TO ITS OPERATIONS
THROUGHOUT THE STATE OF ARIZONA
AND FOR RELATED APPROVALS.

Docket No. E-04204A-15-0142

**VOTE SOLAR'S
EXCEPTIONS TO
RECOMMENDED OPINION
AND ORDER**

1 Pursuant to Commission Rule R14-3-110(B), Vote Solar respectfully files its
2 Exceptions to the Recommended Opinion and Order in the UNS Electric (“UNSE” or
3 “the Company”) rate case, which the Administrative Law Judge (“ALJ”) issued on July
4 20, 2016.

5 INTRODUCTION

6 In this rate case, UNSE has sought to dramatically alter its rate design for
7 customers with solar distributed generation (“DG”), or rooftop solar. Specifically,
8 UNSE proposed to eliminate net metering for new solar customers and require these
9 customers to pay a mandatory demand charge. UNSE proposed a retroactive June 1,
10 2015 grandfathering date for these significant rate design changes. UNSE also sought
11 approval of several other regressive rate design measures, such as substantially
12 increasing the monthly customer charge for residential and small commercial
13 customers, and eliminating the upper residential tier for monthly usage above 1,000
14 kilo-watt hours (“kWh”). If the Commission were to approve UNSE’s proposals, it
15 would drastically alter the economics of rooftop solar (along with energy efficiency and
16 other distributed energy resources). The result would be a substantial reduction in
17 rooftop solar growth and inequitable economic impacts to customers who installed
18 solar between June 2015 and the date of the Commission’s decision.

19 The Recommended Opinion and Order rejected or delayed the resolution of
20 many of these rate design changes. The ALJ recommended the Commission conclude
21 its ongoing “Value of Solar” docket (Docket No. E-00000J-14-0023) before it considers
22 UNSE’s net metering and solar demand charge proposals in a second phase of the rate
23 case.¹ The ALJ also rejected UNSE’s proposed June 2015 grandfathering deadline,
24 ruling that the retroactive grandfathering date was not reasonable.² Instead, if the
25

26 ¹ Recommended Opinion and Order 116:3–18, 140:2–4, 141:8–11.

² *Id.* at 117:12–14.

1 Commission approves any solar rate design changes in the second phase of this
2 proceeding, the new rate design would only apply to customers who filed
3 interconnection agreements after the effective date of the Commission’s decision in the
4 second phase.³ Vote Solar supports the ALJ’s recommendations on these issues.

5 Vote Solar respectfully files five Exceptions to clarify and amend the
6 Recommended Opinion and Order on the following rate design and net metering
7 issues.

8 Residential and SGS Rate Design

- 9 1. Intervenors should have an opportunity to review and comment on UNSE’s new
10 TOU rate schedules.
11 2. The current monthly customer charge for residential and small commercial
12 customers should remain in place.
13 3. The Commission should not eliminate the upper residential tier for monthly usage
above 1,000 kWh.

14 Net Metering

- 15 4. The Commission should not state that solar customers are partial requirements
16 customers.
17 5. The Commission should correct the Opinion and Order to clarify that The Alliance
18 for Solar Choice—rather than Vote Solar—conducted a value of solar analysis.

19 DISCUSSION

20 **I. RESIDENTIAL AND SGS RATE DESIGN**

21 **A. Time-of-Use Rates: Intervenors should have an opportunity to
22 review and comment on UNSE’s new TOU rate schedules.**

23 The ALJ denied proposals from several parties to require all residential and
24 small commercial customers to pay mandatory demand charges.⁴ Instead, the ALJ
25 ruled that time-of-use (“TOU”) rates are “the better, more tempered, path to

26 ³ *Id.* at 117:14–16.

⁴ *Id.* at 65:28–66:8.

1 modernity,” because well-designed TOU rates “should allow better recovery of costs,
2 and send the correct signals about the cost of service and encourage customers to shift
3 their loads to off-peak times.”⁵ Vote Solar supports the ALJ’s recommendation and
4 agrees that TOU rates are a superior rate design option to mandatory demand
5 charges.

6 The ALJ has directed UNSE to develop new default TOU rates, and to
7 implement the new TOU rates after a transition period of at least six months. The
8 ALJ directed UNSE to file the new rate TOU rate schedules with the Commission.⁶

9 Vote Solar requests that the Intervenors have an opportunity to review and
10 comment on UNSE’s new TOU rates before Commission approval, and that the
11 Opinion and Order clarify this point. Notably, the Recommended Opinion and Order
12 explicitly provided an opportunity for Intervenor review of the TOU transition plan,
13 stating: “UNSE shall compile and submit a transition plan for review by Staff and
14 RUCO (and any other interested party to this docket) and Commission approval.”⁷
15 Vote Solar recommends the Opinion and Order contain similar language regarding the
16 new TOU rate schedules. This could be accomplished by adding the following sentence
17 to page 67, lines 11–14 (additions underscored):

18 Then, as directed herein, UNSE shall file a proposed two-part TOU rate, a
19 two-part super-peak TOU rate, a three-part rate and a three-part TOU
20 rate for the Residential Class, and a two-part TOU rate and three-part
21 rate, and three-part TOU rate for the SGS Class. UNSE shall submit
22 these new rate schedules for review by Staff and RUCO (and any other
23 interested party to this docket) and Commission approval.⁸
24

25 ⁵ *Id.* at 66:10, 66:12–14.

26 ⁶ *Id.* at 67:11–14, 139:18–22.

⁷ *Id.* at 66:25–27.

⁸ *Id.* at 67:11–14.

1 **B. Monthly Customer Charge: The current monthly customer**
2 **charge for residential and small commercial customers should**
3 **remain in place.**

4 UNSE proposed to raise the monthly customer charge for residential customers
5 from \$10 to \$15, and to raise the small commercial monthly customer charge from
6 approximately \$14.50-\$16.50 to \$25. The ALJ rejected UNSE's proposal, and instead
7 increased the customer charge for residential customers to \$13 and small commercial
8 customers to \$20.⁹ Vote Solar supports the ALJ's decision to reject UNSE's proposed
9 increases to the monthly customer charge. However, Vote Solar respectfully disagrees
10 with the decision to increase the monthly customer charge beyond the current rates.

11 Increasing the fixed charges paid by residential and small commercial
12 customers will reduce the proportion of the customer bill that is recovered through
13 volumetric energy rates, which means customers pay less for each kWh of energy they
14 consume. This harms the economics of energy efficiency, rooftop solar, and other
15 distributed energy resources, and is thus not in the public interest.¹⁰ In addition,
16 increasing fixed charges also causes numerous other harmful impacts that are not in
17 the public interest, such as reducing the amount of control customers have over their
18 bills and disproportionately impacting low-use customers, many of whom are low-
19 income customers.¹¹ As a result, the monthly customer charge for residential
20 customers should remain \$10, and the monthly customer charge for small commercial
21 customers should remain at \$14.50-\$16.50.

22 **C. Upper Residential Tier: The Commission should not eliminate**
23 **the upper residential tier for monthly usage above 1,000 kWh.**

24 UNSE's residential rates currently have three consumption tiers. The Company
25 has proposed to eliminate the third residential tier for usage above 1,000 kWh and

26 ⁹ *Id.* at 67:7-9.

¹⁰ Briana Kobor Direct Test. 62:15-63:10 (Dec. 9, 2015) (Ex. Vote Solar-6).

¹¹ Jeff Schlegel Direct Test. 4:24-5:10 (Dec. 9, 2015) (Ex. SWEEP-2).

1 offer only two tiers, with a 400 kWh cut-off between the two tiers. Without explicitly
2 ruling on this issue, the ALJ appeared to agree with UNSE, stating that she generally
3 found UNSE's proposed rate schedules to be reasonable.¹²

4 Vote Solar requests the Commission clarify this issue and explicitly maintain
5 the upper residential tier. The Commission has approved inclining block rates
6 specifically to "promote energy conservation and beneficial load shifting."¹³ UNSE now
7 seeks to undo the Commission's earlier policy choice due to its concern the rate design
8 "exacerbate[es]" cost shift issues.¹⁴ However, when the Commission approved the
9 upper residential tier, it was well aware of this obvious affect. Yet the Commission
10 nonetheless approved the rate design measure because of the energy conservation and
11 load shifting benefits. The Commission should thus reject UNSE's attempts to
12 eliminate the upper residential tier in this rate case, and it should explicitly direct the
13 Company to maintain the upper residential tier in the Opinion and Order.

14 II. NET METERING

15 A. UNSE's proposed solar rate design changes are illegal and 16 seriously flawed, and the Commission should not rule on these 17 issues at this time.

18 UNSE proposed to dramatically overhaul rate design for new solar customers by
19 eliminating net metering and imposing a mandatory demand charge. The Commission
20 should reject these solar rate design proposals for numerous legal and policy reasons.

21 1. Rooftop solar is a negligible cause of reduced sales, cost 22 shifts, and grid impacts.

23 UNSE claims its proposed solar rate design changes are necessary because solar
24 customers cause numerous cost recovery and cost shift problems. However, the
25 evidence shows that solar customers are a negligible cause of every problem UNSE

12 Recommended Opinion and Order 66:16-18.

13 Decision No. 70628 at 46:22-23 (Dec. 1, 2008).

14 Vote Solar Initial Post-Hearing Br. 39:17-19 (quoting Craig Jones Direct Test. 42:4-6).

1 highlights. Specifically, rooftop solar was responsible for only 2% of the bills UNSE
2 alleges cause a cost shift, 3% of the decline in usage-per-customer, 5% of low-usage
3 bills for 300 kWh or less, and 6% of the decline in retail sales.¹⁵ In addition, UNSE is
4 unable to quantify any notable grid impacts or related expenses attributed to solar.¹⁶
5 The evidence shows there is no rooftop solar “problem” in UNSE’s territory, and thus
6 there is no need to change the rate design for new solar customers.

7 **2. UNSE’s proposals would violate numerous laws and**
8 **regulations.**

9 UNSE’s net metering and solar demand charge proposals would violate
10 numerous laws and regulations. The Commission’s net metering rules codify retail-
11 rate net metering, and UNSE’s proposal to cut the compensation rate for solar exports
12 by half and eliminate “banking” would violate these rules.¹⁷ While UNSE has
13 requested a partial waiver of the net metering rules, the rules do not contain a waiver
14 provision. It would be improper for the Commission to eviscerate the fundamental
15 principles of the generally-applicable net metering rules by waiving the retail-rate
16 compensation and banking requirements in this UNSE-specific rate case.

17 Moreover, UNSE’s demand charge proposal for new solar customers would
18 violate the prohibition against discriminatory rate treatment in the Arizona
19 Constitution and the Commission’s rules.¹⁸ As discussed above, UNSE claims solar
20 customers cause numerous cost recovery and cost shift problems, but in every instance
21 solar customers are at most a very minor cause of the alleged problem. It would be
22 unjust and discriminatory for UNSE to single out this small minority of customers for
23

24 ¹⁵ *Id.* at 5:4–8:17.

25 ¹⁶ *Id.* at 8:18–10:12.

26 ¹⁷ A.A.C. R14-2-2302(11); *see also id.* R14-2-1801(M); Vote Solar Initial Post-Hearing Br. 12:4–14:19.

¹⁸ Ariz. Const. art. XV, § 12; A.A.C. R14-2-1801(M) & R14-2-2305; *see also Town of Wickenburg v. Sabin*, 200 P.2d 342, 343 (Ariz. 1948).

1 punitive rate treatment to address an alleged problem, while allowing the customers
2 who actually cause the vast majority of the problem to avoid the punitive rates.¹⁹

3 Even if the demand charge proposal was not discriminatory, UNSE failed to
4 meet the evidentiary burden that is required by law to justify any differential charges
5 on solar customers. The Commission's net metering rules state that if UNSE seeks to
6 increase the charges paid by solar customers compared to the similarly-situated non-
7 solar customers, UNSE must justify the differential treatment with cost of service
8 studies and benefit/cost analyses.²⁰ The rules also state UNSE "shall have the burden
9 of proof on any proposed charge."²¹ UNSE did not provide the required documentation
10 to justify the demand charge, much less meet its burden of proof for the charge. UNSE
11 failed to conduct a value of solar analysis or any other form of benefit/cost analysis for
12 rooftop solar that meaningfully analyzed the benefits solar provides. In addition,
13 UNSE did not provide an adequate cost of service study to support singling out solar
14 customers in this manner. UNSE's cost of service study did not include any solar
15 customer data or any analysis of solar customers, and it did not separately analyze the
16 relative costs to serve solar customers. Thus, UNSE did not demonstrate that the cost
17 to provide electricity to solar customers differs from the cost to serve other customers,
18 or by what magnitude the cost to serve solar customers may differ. UNSE appears to
19 believe it is self-evident that the cost to serve solar customers is higher, but this
20 unsupported assumption is insufficient to meet UNSE's evidentiary burden.²²

21 3. UNSE's proposals are significantly flawed.

22 In addition to violating numerous laws and regulations, UNSE's net metering
23 and solar demand charge proposals are seriously flawed as a policy matter. UNSE
24

25 ¹⁹ Notably, Staff agrees it would be unreasonable to single out new solar customers for a
26 mandatory demand charge. Thomas Broderick Direct Test. 6:6-13 (Dec. 9, 2015) (Ex. S-16).

²⁰ A.A.C. R14-2-2305.

²¹ *Id.*

1 proposes to compensate solar exports based on the price of the most recent utility-scale
2 solar PPA. This proposal improperly conflates distributed solar and utility-scale solar,
3 as these two resources are not interchangeable. Distributed solar provides unique
4 benefits that utility-scale solar does not provide.²³ Arizona and several other states
5 have recognized this important fact by creating distributed generation “carve-outs” in
6 their renewable energy standards, which require utilities to procure certain amounts
7 of distributed resources.²⁴ These distributed generation “carve-outs” are strong
8 evidence that distributed solar and utility-scale solar are not fungible or
9 interchangeable resources.

10 Distributed solar and utility-scale solar also differ from one another because
11 they are installed and operated by different entities who operate in different markets
12 and face different regulatory constraints. Distributed solar is installed by thousands
13 of households and small businesses across Arizona. In contrast, utility-scale solar is
14 installed and operated by utilities and sophisticated energy companies.

15 Distributed solar is also subject to numerous regulatory constraints that a
16 utility-scale solar project does not face. A household or small business that installs
17 rooftop solar must locate the solar panels on the roof of their home or business, or
18 elsewhere on their premises.²⁵ A utility-scale developer, however, can strategically
19 choose where to develop their projects to maximize their profits. In addition, a
20 household or small business that installs rooftop solar must do so for the primary
21
22

23 ²² See Tr. 2547:2–2548:22 (Jones Test.).

24 ²³ Vote Solar Initial Post-Hearing Br. 15:1–17:2.

25 ²⁴ A.A.C. R14-2-1805; Colo. Rev. Stat. § 40-2-124(1)(c)(I)(E), (1)(c)(II)(A) (3% DG carve out
26 by 2020, with half of that requirement from retail DG); 20 Ill. Comp. Stat. 3855/1-56(b) (1% DG
carve out, with half of that requirement from systems smaller than 25 kW); Minn. Stat. §
216B.1691 subdiv. 2f(a) (1.5% solar carve out, with 10% of that requirement from DG systems
smaller than 20 kW); N.M. Code R. § 17.9.572.7(G) (3% DG carve out).

²⁵ A.A.C. R14-2-2302(13)(a).

1 purpose of providing “part or all of the [customer’s] requirements.”²⁶ In contrast, a
2 developer builds a utility-scale solar project for the primary purpose of selling energy
3 for profit. A household or business that installs rooftop solar must also limit the size of
4 the solar PV system to provide no more than 125% of the customer’s total load.²⁷ A
5 utility-scale solar project does not face this size limitation.

6 In addition, distributed solar and utility-scale solar operate in very different
7 markets. Utility-scale developers can sell the electricity they generate to numerous
8 buyers by bidding into a number of utility requests for proposals. In contrast, there is
9 no competitive market for rooftop solar exports. Rooftop solar customers must deliver
10 their exports to the utility, and they cannot enter into a contract with another
11 individual or entity to purchase their excess electricity.

12 UNSE’s mandatory demand charge proposal is also seriously flawed. The
13 record is replete with evidence showing that requiring UNSE’s residential and small
14 commercial customers to pay mandatory demand charges would be extremely
15 problematic. As the ALJ found, “any transition to three-part rates will require a
16 massive public education effort before we can say with any degree of certainty that
17 mandatory residential demand rates in UNSE’s service territory are in the public
18 interest.”²⁸ Significantly, every problem with mandatory demand charges that has
19 been highlighted in this case remains applicable if only new solar customers are
20 required to pay the charge.²⁹ Thus, for the same reasons that it is not in the public
21 interest to require all residential and small commercial customers to pay mandatory
22 demand charges, it is also not in the public interest for new solar customers to pay
23 mandatory demand charges.

24
25 ²⁶ *Id.* R14-2-2302(13)(b).

26 ²⁷ *Id.* R14-2-2302(13)(d).

²⁸ Recommended Opinion and Order 66:2–4.

²⁹ Vote Solar Post-Hearing Resp. Br. 7:8–9:8 (May 11, 2016).

1 **4. The Commission should complete the Value of Solar**
2 **proceeding before ruling on UNSE's proposals.**

3 The ALJ recommended delaying the resolution of these issues until after the
4 Commission completes the ongoing Value of Solar proceeding.³⁰ Vote Solar supports
5 this recommendation. UNSE made no attempt in this case to conduct a value of solar
6 analysis that values the net benefits provided by rooftop solar exports. Without this
7 information, the Commission cannot make a rational and reasoned decision on
8 eliminating net metering by changing the compensation rate for exports. The Value of
9 Solar proceeding may provide important guidance on this calculation. If the
10 Commission were to move forward with eliminating net metering in this rate case and
11 its actions conflicted with the subsequent decision in the Value of Solar proceeding,
12 UNSE's solar customers may have to undergo yet another significant rate design
13 change soon after the conclusion of this rate case. In addition, delaying the resolution
14 of these solar rate design issues until the second phase of the proceeding will allow
15 additional time for the parties to explore settlement options. For these reasons, it is in
16 the public interest to resolve UNSE's net metering and solar demand charge proposals
17 in a subsequent, second phase of the rate case.

18 **B. The Commission should not state that solar customers are partial**
19 **requirements customers.**

20 Footnote 449 of the Recommended Opinion and Order states that when a
21 household or small business installs rooftop solar, "that customer essentially changes
22 from a full-requirements customer to a partial requirements customer."³¹ Because the
23 textual sentence associated with footnote 449 summarizes UNSE's claims, it is unclear
24 whether the footnote further summarizes UNSE's claims, or if it is intended to
25 represent the Commission's view on this issue. If the ALJ intended to further

26 ³⁰ Recommended Opinion and Order 115:19-117:16.

³¹ *Id.* at 115, n.449.

1 summarize UNSE's claims in the footnote, Vote Solar recommends the Commission
2 clarify this point in the Opinion and Order. This could be accomplished by adding the
3 following phrase to the beginning of footnote 449 (additions underscored): "The
4 Company claims that [w]hen a UNSE customer opts to install rooftop solar"

5 If the ALJ intended footnote 449 to represent the Commission's position on this
6 issue, Vote Solar recommends the footnote be deleted. Partial requirements customers
7 are typically large industrial customers whose business operations require complex
8 energy management. Whether rooftop solar customers should be classified as partial
9 requirements customers has been a point of contention in this rate case and the Value
10 of Solar proceeding.³² There is insufficient evidence here to support a Commission
11 finding that solar customers are categorically different types of customers than their
12 next door neighbors, and the Commission should not take a position on this disputed
13 issue in a footnote that is unnecessary to the resolution of this case.

14 **C. The Commission should correct the Opinion and Order to clarify**
15 **that The Alliance for Solar Choice—rather than Vote Solar—**
16 **conducted a value of solar analysis.**

17 Page 117, lines 4–5 of the Recommended Opinion and Order states: "Vote Solar
18 provided estimates of the value of DG solar but other parties have challenged the
19 premises of the analysis and accuracy of those calculations."³³ This statement is
20 incorrect. As the ALJ correctly noted elsewhere, The Alliance for Solar Choice
21 ("TASC"), rather than Vote Solar, conducted a value of solar analysis in this
22 proceeding.³⁴ Accordingly, Vote Solar requests the Commission correct page 117, lines
23 4–5 as follows (additions underscored): "TASC ~~Vote Solar~~ provided estimates of the

24
25 ³² See, e.g., Value of Solar Proceeding, Docket No. E-00000J-14-0023, Vote Solar Initial
Closing Br. 6:1–3 & n.11 (July 20, 2016).

26 ³³ Recommended Opinion and Order 117:4–5.

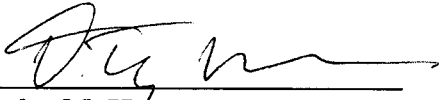
³⁴ *Id.* at 108:12–14; see also Mark Fulmer Surrebuttal Test. 30:12–47:11 (Feb. 23, 2016)
(Ex. TASC-21).

1 value of DG solar but other parties have challenged the premises of the analysis and
2 accuracy of those calculations.”

3 CONCLUSION

4 Vote Solar respectfully requests that the Commission amend and clarify the
5 Recommended Opinion and Order as detailed above.

6
7 DATED July 29, 2016.

8 By 
9 Timothy M. Hogan
10 ARIZONA CENTER FOR LAW IN
11 THE PUBLIC INTEREST
12 514 W. Roosevelt Street
13 Phoenix, Arizona 85003

14 Michael A. Hiatt
15 EARTHJUSTICE
16 633 17th Street, Suite 1600
17 Denver, Colorado 80202

18 *Attorneys for Vote Solar*

19 ORIGINAL and 13 COPIES of the
20 Foregoing filed this 29th day of July,
21 2016, with:

22 Docketing Supervisor
23 Docket Control
24 Arizona Corporation Commission
25 1200 W. Washington
26 Phoenix, AZ 85007

COPIES of the foregoing
Electronically mailed this
29th day of July, 2016, to:

All Parties of Record